will not decree a forfeiture. *State* v. *Farmers' College*, 32 Ohio St. 487. And where circumstances make it desirable, the court can adopt the middle course of ousting the corporation merely from the performance of the wrongful acts, allowing it to continue in the general exercise of its franchise. *State* v. *Benefit Association*, 42 Ohio St. 579. A judgment of ouster of the right to be a corporation is an extreme penalty, especially against educational or charitable institutions, and is justified only where the act or omission is expressly made a cause of forfeiture, or where there has been some wilful abuse or improper neglect of some part of the corporate franchise in which the public has an interest. Mere non-user of the franchise may occur under circumstances which will justify this extreme penalty. *Edgar Collegiate Institute* v. *People*, 142 Ill. 363. And where there has been such gross abuse as appeared in the principal case, there can be little doubt that the charter should be taken away. The selling of degrees is a clear abuse of the power to confer them, and is a distinct fraud upon the public justifying the extreme penalty. *Illinois Health University* v. *People*, 166 Ill. 171; *Independent Medical College* v. *People*, 182 Ill. 274. Even if direct participation in this could not be brought home to the trustees, yet they were clearly guilty of an unwarrantable neglect of a duty owing to the state. Public sentiment at the present day demands a reasonably high standard in educational institutions, and it is well for such corporations to remember that they are not exempt from the penalty of civil death.

PAROL AGREEMENTS TO SAVE HARMLESS ON COVENANTS. — That parol agreements which vary the express promises of a deed will not be recognized is a well-settled doctrine. A parol promise as consideration for a deed, however, which does not vary the covenantor's promise, may be shown, although differing from the consideration expressed in the instrument. Whether or not recognition will be accorded to a parol agreement which, while in terms it does not contradict the deed, yet negatives its effect by providing that the covenantee shall be saved harmless from all liability under its covenants, is an extremely doubtful question. The point is suggested by a recent Texas decision. *Johnson* v. *Elmen*, 59 S. W. Rep. 253. The defendant conveyed land to the plaintiff with an implied warranty against incumbrances. At the time there were outstanding against the defendant two notes which constituted a vendor's lien on the land. The plaintiff undertook to pay off these notes as part payment, and at his request no mention of them was made in the deed. He failed to pay, and the land was sold by foreclosure. He then brought an action on the covenant against incumbrances. The court held that the defendant's parol promise defeated the action, its effect being not to except the incumbrance from the terms of the covenant, but to show that, as between the parties, it had been discharged at the time of the conveyance, so that there had been no breach. While the decision in its reasoning is in accord with a majority of the few decisions in point, if it is to be supported otherwise than as an exception to the parol evidence rule, it must be on the ground that the plaintiff promised to save the defendant harmless from any liabilities under his covenant. *Blood* v. *Wilkins*, 43 Iowa, 565. For at the time the warranty was made the incumbrance as a matter of fact existed, and to hold it discharged as between

the parties is only another way of saying that it may constitute an exception to the terms of the covenant.

If the general principle is accepted, it is evident that there was a breach the moment the warranty was made, giving a right to nominal damages. The parol promise to pay off the notes could have been shown by the defendant, as it contradicted no term of the deed, and did not negative the defendant's liability. But this would only show that in paying off the incumbrance — and allowing the land to be taken by foreclosure must be regarded as payment — the plaintiff suffered no substantial damage, as had the defendant's warranty been true, and the notes formed no incumbrance, the plaintiff, being still under an obligation to pay them, would have been to the same extent out of pocket. It is clear, however, that by the understanding of the parties the defendant was not to be liable even for nominal damages. The plaintiff undertook not only to pay off the notes, but also, at least impliedly, to save the defendant harmless from any liability he might suffer from their remaining outstanding. All courts would probably recognize the first promise, to pay the notes : only the more liberal would recognize the second, to save harmless ; as, by giving the defendant an action to recoup any loss he might suffer, the deed would in effect be negatived in so far as this particular incumbrance was concerned. *Roberts* v. *Greig*, 62 Pac. Rep. 574 (Col.). This more liberal view, however, seems preferable, as it gives the intended effect to the transaction. It is not open to the objection that the terms of the deed are thereby made uncertain, as they and liability under them are admitted to the fullest extent. The promise to save harmless merely gives the defendant a right to recoup any loss he suffers through the breach of his covenant. In the principal case had such an implied promise been recognized, the court could have allowed it as a complete defence, to prevent circuity of action, and thus arrived at their result without making an exception — which in truth they must be regarded as having made — to the parol evidence rule.

Constructive Severance of Fixtures. — A recent case is interesting because it differs from the trend of modern authority as to the nature of fixtures. The subject of fixtures has always caused much confusion in the law, and this confusion the principal case in no way tends to clear up. The owner of a greenhouse and the land on which it stood sold the greenhouse and at the same time leased the land to the vendees. The sale was by parol and consequently not recorded. Subsequently the vendor mortgaged the land to the plaintiff, who had no notice of the sale. The court held that, on foreclosure, the mortgagee was not entitled to the greenhouse. *Royce* v. *Latshaw*, 62 Pac. Rep. 627 (Col.).

This result is upheld by a few decisions : *Robertson* v. *Corsett*, 39 Mich. 777 ; *Fifield* v. *Maine Central R. R.*, 62 Me. 77. The majority of the courts, however, hold that such a constructive severance, while good between the parties themselves, is not effectual against a subsequent mortgagee without notice. *Joliet Bank* v. *Adam*, 138 Ill. 483. As a matter of strict principle, the latter view seems preferable. It is a rule of law that whatever is attached to land becomes a part of the realty, and goes to the owner of the land. So when an article of personalty is attached to land, its nature changes, and it becomes a part of the freehold. But